

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 01-244
(Judge Charles W. Cope)

Case No. SC01-2670

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SPECIAL COUNSEL'S IN LIMINE MOTION

TO EXCLUDE EXPERT TESTIMONY ON DUTY OF DISCLOSURE

The Special Counsel hereby moves to exclude expert testimony regarding whether the Code of Judicial Conduct required Judge Cope to report his arrest to the Judicial Qualifications Commission and to litigants before him and in support thereof states:

1. Judge Cope has listed Arthur England and William Ross as expert witnesses and, in a letter attached hereto as **Exhibit A**, has represented that they will "render an opinion that Judge Cope did not violate the Canons of Ethics by failing to report his arrest to the JQC and to private litigants."

2. Expert testimony is not appropriate with regard to an ultimate legal conclusion that the Hearing Panel is required to make. The Hearing Panel in the first instance and the Supreme Court of Florida ultimately are the bodies charged with determining whether Judge Cope's failures to disclose violate the Code of Judicial Conduct. See, e.g., Christian v. State, 693 So. 2d 990, 993 (Fla. 1st DCA 1996) ("It is improper to permit an expert to express an opinion which applies a legal standard to a set of facts."); Fino v. Nodine, 646 So. 2d 746, 749 (Fla. 4th DCA 1994) ("If the witness' conclusion tells the trier of fact how to decide the case, and does not assist it in determining what has occurred, then it is inadmissible.")

3. The opinion of other people as to this legal conclusion is irrelevant. Judge

Cope's counsel has the role of arguing his position on the law, and it is not appropriate to bring in two expert witnesses to join that argument.

WHEREFORE, the Chair should exclude expert testimony regarding whether the Code of Judicial Conduct required Judge Cope to report his arrest to the Judicial Qualifications Commission and to litigants before him.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this 19th day of June, 2002.

By:
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